

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

J. BARRIOS, et al.,

Defendants.

Case No. 1:23-cv-00054-KES-HBK (PC)

ORDER DIRECTING DEFENDANTS TO
RESPOND TO PLAINTIFF'S MOTION TO
AMEND AND MOTION FOR VOLUNTARY
DISMISSAL

ORDER DIRECTING CLERK TO REFILE
MISFILED PLEADING

(Doc. No. 92, 96)

Pending before the Court is Plaintiff Durrell Anthony Puckett's Motion to Amend filed October 21, 2024. (Doc. No. 92). Plaintiff's Motion is accompanied by a lodged fourth amended complaint. (Doc. No. 93). Plaintiff proceeds on his third amended complaint that alleges an Eighth Amendment conditions of confinement claim against Defendants Baraona, J. Barrios, Gaxiola, T. Campbell, White, and Hernandez. (Doc. No. 73). To the extent discernable in his lodged fourth amended complaint, Plaintiff seeks to add a new defendant, K. Allison as a defendant, and seeks to allege an Eighth Amendment medical indifference claim. (*See generally* Doc. No. 93). Plaintiff is not permitted leave to amend his operative complaint as a matter of course. Federal Rule of Civil Procedure 15(a)(1) permits the amendment of a pleading only once as a matter of course. Federal Rule of Civil Procedure 15(a)(2) allows Plaintiff to amend his

1 complaint, “only with the opposing party's written consent or the court's leave.” Fed. R. Civ. P.
2 15(a)(2). Defendants’ opposition, if any, the Motion to Amend is due **no later than November**
3 **12, 2024**.¹ Local Rule 230(l).

4 Also pending is Plaintiff’s Motion for Voluntary Dismissal filed November 4, 2024.
5 (Doc. No. 96).² Plaintiff seeks to dismiss with prejudice Defendants Barrios and Gaxiola. (*Id.*).
6 The Court construes the Motion to Dismiss as filed pursuant to Rule 41(a)(2) of the Federal Rules
7 of Civil Procedure because Defendants Barrios and Gaxiola previously answered the operative
8 third amended complaint. Fed. R. Civ. P. 41(a)(2) (“Except as provided in Rule 41(a)(1), an
9 action may be dismissed at the plaintiff’s request only by court order, on terms that the court
10 considers proper”); *see also Thacker v. AT&T Corp.*, 2021 WL 3206202, at *2 (E.D. Cal. July 29,
11 2021), report and recommendation adopted, 2021 WL 4168533 (E.D. Cal. Sept. 14, 2021).
12 Defendants’ opposition, if any, is due no later than November 25, 2024. Local Rule 230(l).

13 Absent consent, both motions require a magistrate judge to address the requested relief by
14 findings and recommendations to the district court. *See, e.g., Jones v. Ayon*, 2024 WL 4625809,
15 at *1 (E.D. Cal. Oct. 30, 2024) (adopting magistrate judge’s findings and recommendations to
16 granting Rule 41(a)(2) motion); *see also Bastidas v. Chappell*, 791 F.3d 1155, 1163 (9th Cir.
17 2015) (noting that denial of a motion to amend may be dispositive and thus require a magistrate
18 judge to issue findings and recommendations). For matter of judicial efficiency, the Court will
19 direct Defendants to file an expedited opposition or statement on non-opposition to the Motion to
20 Dismiss **no later than November 15, 2024** in order that the undersigned may address both
21 Motions in a consolidated findings and recommendation, if appropriate.

22 Accordingly, it is **ORDERED**:

- 23 1. Defendants shall file responses to Plaintiff’s Motion to Amend (Doc. No. 92) no later
24 than November 12, 2024 and Plaintiff’s Motion for Voluntary Dismissal (Doc. No.
25 96) no later than November 15, 2024.

26 _____
27 ¹ The court is closed on Monday, November 11, 2024, in recognition of Veteran’s Day, a federal holiday.

28 ² Upon review of the Motion to Dismiss, the Court finds the Clerk inadvertently filed Plaintiff’s Supplement to Motion for Summary Judgment as part of the Motion to Dismiss. The Court will direct the Clerk to correct the misfiled pleading.

2. **Within 10 days of this Order**, Defendants shall return the Consent/Decline to Jurisdiction of Magistrate Judge form available on the court's website under Civil Forms: <https://www.caed.uscourts.gov/caednew/index.cfm/forms/civil>.
3. The Clerk of Court is directed to refile Plaintiff's misfiled pleading titled "Supplement for Motion for Summary Judgment" (Doc. No. 96 at 2) as a separate pleading and delete the corresponding pleading from the Motion for Voluntary Dismissal.

Dated: November 7, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE